## APPELLATE CRIMINAL.

*Before Mr. Justice Curgenven.*

1931, November 5.

SUBBIAH KONE (ACCUSED), PETITIONER IN BOTH,

*v.*

KANDASAMY KONE (COMPLAINANT IN CRIMINAL REVISION CASE No. 418 OF 1931), RESPONDENT.*

*Code of Criminal Procedure (Act V of 1898), sec. 403—Applicability of—Successive convictions under sec. 323, Indian Penal Code, and sec. 3 (12), Towns Nuisances Act (Madras Act III of 1889)—Legality.*

Section 403 of the Code of Criminal Procedure is no bar to convictions successively under section 323, Indian Penal Code, and under section 3 (12) of the Madras Towns Nuisances Act in respect of the same conduct of being guilty of disorderly behaviour. Though the act or series of acts constituting the two offences may have been the same, they are capable of being viewed from two different points of view. The offence of hurt is an offence against an individual, while the offence under the Towns Nuisances Act is an offence against the public. Further, the circumstances to be considered in regard to the two cases are not precisely the same.

*Emperor* v. *Ram Sukh*, (1924) I.L.R. 47 All. 284, and *In re Dodhu Kalu*, (1929) 31 Bom. L.R. 922, referred to.

PETITIONS under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgments of the Court of the First-class Bench of Magistrates, Tinnevelly, and of the Court of the First-class Bench of Magistrates of Kokkarakulam, Tinnevelly, in Summary Trial No. 46 of 1931 and in Bench Case No. 28 of 1931 (Calendar Case No. 315), respectively.

*V. Rathnam* for petitioner.

*Public Prosecutor* (*L. H. Bewes*) for the Crown.

No one appeared for respondent.

* Criminal Revision Cases Nos. 418 and 417 of 1931.

JUDGMENT.



The petitioner in these two cases has been convicted of causing hurt under section 323, Indian Penal Code, and, in respect of the same conduct of being guilty of disorderly behaviour, under section 3 (12) of the Towns Nuisances Act. The point taken is that one or other of the convictions must be set aside because together they offend against section 403 of the Code of Criminal Procedure. I think that this is taking an incorrect view of the application of that section. Under sub-section 2 of section 403 a person can be tried for any distinct offence for which a separate charge might have been made against him under section 235 of the Code of Criminal Procedure, notwithstanding that he may have been convicted or acquitted of another offence committed in the same transaction. Here, although the act or series of acts constituting the two offences may have been the same, they obviously are capable of being viewed from two entirely different points of view. The offence of hurt was an offence against an individual. The offence under the Towns Nuisances Act was an offence against the public. It is not indeed even the case that precisely the same circumstances have to be considered in regard to the two cases, because under section 3 of the Towns Nuisances Act the occurrence must have taken place in some public street, road, thoroughfare or place of public resort in order that the offence may have been committed.

My attention has been drawn to several cases upon the construction of section 403 of the Code of Criminal Procedure but I do not feel disposed to depart from this view after examining them. In *In re Chinnappa Naidu*(1) and *Alfred Laird* v. *King Emperor*(2) there was only one substantial aspect from which the

(1) A.I.R. 1924 Mad. 473. (2) A.I.R. 1927 Cal. 224.

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occurrence could be regarded, in the former case as constituting mischief and in the latter case as constituting an assault upon an individual. It is true that the learned Judge who decided *Fatteh Muhammad* v. *Emperor*(1) accepted as the test that the act was a single one. In that case a tree was cut in a grave yard and one of the offences said to have been committed was under section 297, Indian Penal Code, and another under section 379, Indian Penal Code. With all respect I think this was clearly an instance in which under section 235 of the Code of Criminal Procedure two charges might have been framed and two punishments awarded for the two separable offences committed. The case in *Emperor* v. *Kallasani*(2) was of a different character, because it related to two offences which were connected in the manner contemplated in section 236 of the Code of Criminal Procedure, that is to say, where the commission of one or the other of them was doubtful. I cannot agree that the test proposed in that case, that the evidence should be the same in respect of the two offences, is a conclusive test, if it is to apply to cases of the kind now under reference. Much more nearly similar to the circumstances of the present cases are those of *Emperor* v. *Ram Sukh*(3) and *In re Dodhu Kalu*(4). In both of those cases the offences fell under sections 323 and 160, Indian Penal Code and it was held that such offences were distinct and separable and that there was no bar to the trial of one by virtue of a conviction in respect of the other. In the same way in the present cases I can find no bar to the trial of the one offence owing to the conviction in respect of the other, and I accordingly dismiss the criminal revision petitions.

K.N.G.

(1) (1926) I.L.R. 8 Lah. 52.
(2) A.I.R. 1927 Bom. 629.
(3) (1924) I.L.R. 47 All. 284.
(4) (1929) 31 Bom. L.R. 922.